1947

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File No. Agrl. Debtors Relief II/47

Legal **DEPARTMENT**

B **BRANCH**

Subject:—

Rules and Notifications under Agricultural Debtors Relief Act, 1939.

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MLS
K.S.R.
14/7

(1)

Office of D. T. L. A.

A revised draft notification is sent herewith. D. is requested to verify if it is suitable and carries out its intentions.

2. The Department may also consider whether it is necessary for the sake of clarity to add either of the expressions (1) "in area" or (2) "in dimension" after the word "separate", according as the criterion of area or dimension is to be adopted.

Sd. P.M. LAD 17/6
Secretary to the Govt. of India,
Department of Local Affairs.

No. 2(3)-D.T./46, Simla, dated the 18th June 1947.

NOTIFICATION.

Revenue Department,
Bombay Castle, June 1947.

Bombay Agricultural Debtors Relief Act 1947.

No.4460/45.- In exercise of the powers conferred by sub-section (3) of section 47 of the Bombay Agricultural Debtors Relief Act, 1947 (Bom.XXVII of 1947), the Government of Bombay is pleased to notify, 4 acres of betelnut and onion garden lands, or 6 acres of irrigated, rice or cocoa-nut lands or 18 acres of dry land or any land assessed at Rs. 30/- whichever is greater, as the minimum necessary for the maintenance of the debtor and his descendants.

By order of the Governor of Bombay,

Secretary to Government.

DRAFT RULES

"5A. Form of statement under section 14. The statement which a debtor or creditor is required to submit under section 14 shall be in Form No. 3A or Form No. 3B, as the case may be".

"5A. Manner of determining the market value of debtor's property under sub-section (4) of section 29.

For the purposes of sub-section (4) of section 29, the market value of the debtor's lands, which under any law for the time being in force, are not transferable or alienable except with the previous sanction of the Collector or the Provincial Government shall be determined by the Court by taking into consideration -

(a) the bonafide sales and leases of the lands in question during the preceding 12 years, if any, and

(b) the bonafide sales and leases of similar lands in the neighbourhood during the preceding 12 years after ascertaining the valuation of the lands in question from the Mamlatdar of the taluka or Mahalkari of the mota concerned".

"Form No. 3A

(See Rule 5A)

Statement required to be submitted by a debtor under section 14 of the Bombay Agricultural Debtors Relief Act, 1947.

(Contd.)

1. Amount and particulars of debts due from the debtor (including those mentioned in section 3 of the Act).

(Here enter A-A on p. 18 ante)

2. Particulars of debtor's property including claims due to the debtor.

(Here enter B-B on pages 19-20 ante)

3. Particulars of property of the nature mentioned in paragraph 3 transferred or encumbered.

(Here enter C-C on p. 20 ante)

Signature of debtor.

Note. Here enter D-D on p. 21 ante.

Form 3 B.

(See Rule 5A)

Statement required to be submitted by a creditor under section 14 of the Bombay Agricultural Debtors Relief Act, 1947.

1. Particulars of Creditors claims

(Here enter E-E on page 21 ante)

2. Particulars of debtor's property including property situate outside the Province of Bombay so far as they are known to the creditor.

(Here insert F-F on p. 22 ante)

Signature of creditor.

Note. Here enter G-G on p. 22 ante

Office of the R.L.A.

A draft of the revised rules and forms is sent herewith.

2. The first rule which R.D. proposes to insert after draft rule 5 provides that the statements to be furnished by the debtor and creditor shall contain the particulars stated in paras. 3 and 5 of Forms Nos. 1 and 3 respectively. Form No. 1 to which reference has been made in the R.D. draft rule contains also para.4 and a note. (pages 20-21 ante). Para. 4 in turn refers to para.3 and the note refers to para.3. Unless R.D. has any objection on administrative grounds para.4 of Form 1 and the note thereto should also be included in the form of the statement to be furnished by the debtor. Similarly, the note to Form 3 (p.22) should also be included in the form of the statement to be furnished by the creditor.

3. The other rule which R.D. has sent to the R.L.A. for scrutiny should be inserted after draft rule 6 and the consequential change as suggested should be carried out in the marginal note to rule 6.

4. Before issue of the rules, R.D. will no doubt renumber the Rules and Forms and check all cross references.

D. V. V.

Remembrancer of Legal Affairs.

U.O. No. R.D. 2, No. 7161 dated the 12th July 1947.

R.L.A.

This is indeed a very able note. It is quite clear from the provisions of section 25 of the Bombay General Clauses Act, 1904, that the old forms, in so far as they are inconsistent with the provisions of the proposed new forms, cannot continue in force and cannot be deemed to have been made or issued under the provisions of the new Act or Rules framed thereunder. But the more pertinent question, as far as the present matter is concerned, is "what about those portions of the old forms which are not inconsistent with the provisions of the new proposed forms?" I personally have no doubt that the words "so far as it is not inconsistent" occurring in section 25 of the Bombay General Clauses Act, 1904, do clearly indicate that the portions of the old forms, in so far as they are not inconsistent with the new proposed forms, shall continue in force and be deemed to have been made or issued under the provisions of the new Rules. Otherwise, I think, the words "so far" become meaningless. If the intention of the Legislature had been to enact that as soon as there is some inconsistency between the old forms and the new forms, the old forms will be rendered useless altogether, they could have said "shall, if it is not inconsistent with the provisions re-enacted etc." The Legislature in that case would not have used the words "so far". Therefore, my own view is that the construction which A.A.L.R. has put on section 25 is perfectly correct.

2. On the other hand, a serious difficulty immediately arises, in this particular case, if we omit the words (from the old forms) which are inconsistent with the new provisions. The word "Board" which we find in the old forms

inconsistent with the new provisions. According to the new provisions the word "Court" is going to be there. Naturally, therefore, the word "Board" must be omitted from the old forms, and no sooner we do so, a serious difficulty arises. It is like knocking the head off the body. If we omit the word "Board" from the old forms, we omit the authority to whom an application is to be made. We cannot very well prescribe by a press note that the applicant shall write "Court" in place of "Board"; nor can the applicant himself at his own instance write accordingly. The entire contents of a form are to be prescribed by Rules made under the Act. Therefore, a press note on the subject will be illegal. If the applicant himself changes the word "Board" into "Court", it will also be illegal as long as the change is not warranted by the Rules framed under the Act. If the applicant makes the change himself, or if a press note is issued on the subject, there is a danger of the Court ruling the application out as illegal.

3. To be on the safe side, therefore, it is most essential that the new Rules must be published as expeditiously as possible, leaving sufficient time to the applicants to apply according to the forms issued under the new Rules. I understand that the Revenue Department is publishing the new Rules provisionally today and finally on 19th July. In that case, there will be a sufficient period for the people to acquaint themselves with the new Rules and forms and apply according to the new forms.

Sd. D.V.Vyas
12.7.47

U.R. to R.D. No. 7174 dated the 12th July 1947.

Office of the R.L.A.

A revised draft of the rules is sent herewith.

2. Preamble :- It is necessar to supersede the Bombay Agricultural Debtors relief Rules, 1941. The preamble has bee amended accordingly.

3. Rule3 :- Under section 2(13) 'seasonal finance' means advancing of loans for such purposes as may be prescribed. 'Prescribed' means prescribed by rules. As the section stands it would be necessary to prescribe the purposes in the rules themselves and not leave them to be determined later on. Clause (x) of rule 3 which leave the other purposes to be certified by Government later on is therefore omitted although such a clause was present in old rule 3.

4. Rule 5:- This prescribes the form of notice to be given under section 3(3) on receipt of an application for recording settlement of a debt The form of notice is not required to be prescribed and does not appear to be necessary especially as the notice is to be given by a court. Under the old Act a notice was to be given by the Board and therefore the forms was prescribed (cf. section 23(3) of the Bombay Agricultural Debtors Relief Act, 1939). The same remarks apply in the ca ese of rules 8 and 9 prescribing forms of notices under section 19(2) and section 20(1) and (2).

5. Rules 6 and 11:- Under the Act awards can be made under sections 8(4), 9, 33 and 33(2). Of these only the latter two sections require the forms of the award to be Prescribed. Rule 6 which prescribes the forms of awards under section 8(1) and 9 is therefore omitted.

6. Result 7 :- Revenue Department draft rule 7 prescribes the forms of notices to be given by the Court under section 14 and the manner of publication of general notice. Under clause (d) of section 55(2) the following is required to be

prescribed :-

(1) The manner of giving notice,

(2) the manner of publication of ~~general~~ notice, and

(3) the form of statement.

For the reasons stated in paragraph 4 general above, the forms of notices (Forms Nos. 6 and 7) are omitted. Revenue Department should consider what the manner giving notice and the form of statement should be.

(7). Rule 10 :- The Revenue Department draft rule prescribes the manner of determining the value of the debtor's property and assets for purposes of sub-sections (1) and (4) of section 20. The draft rule is not in order. The value is to be determined by the Court under sub-section (1) subject inter alia to sub-section (4). It would be necessary to have two separate rules, one prescribing the manner in which the Court shall determine the value under sub-section (1) and the other prescribing the manner of calculating the market value of lands of the nature described in sub-section (4). The rule as amended will suffice for purposes of section 20(1). R.D. will no doubt frame rules for the purposes of sub-section (4) of section 20.

D.V. Vijaya.

Remembrancer of Legal Affairs.

F.P. to R.D. No. 6806 dated the 2nd July 1947

Form No. 10.

(see rule 29(3)

Award under section 55(1) of the Bombay Agricultural Debtors Relief Act, 1939.

Case No. of 194 .

Award of the Board.

Whereas on an application made under the Bombay Agricultural Debtors Relief Act, 1939, for the adjustment of the debts of resident of (hereinafter referred to as the said debtor), this Board has determined under the provisions of the said Act the total amount of his debt as scaled down under section 53 of the said Act;

*To be retained if the total amount of debt as scaled down does not exceed half the value of the immoveable property of the said debtor.

* And Whereas the total amount of the debt as scaled down under the said section 52, does not exceed half the value of the immoveable property of the said debtor;

@ And Whereas the creditor(s) mentioned in the Schedule hereto annexed has/have all agreed to the further scaling down of the debts under sub-section (3) of section 55 of the said Act;

@ To be retained where all creditors agree to further scaling down of debts under section 55(2).

And Whereas the said debtor has not paid the amount of the debt as finally scaled down and has not produced the creditor's receipt for the payment thereof;

It is hereby directed under sub-section (1) of section 55 of the said Act that —

(a) the £ .. .. . Primary land mortgage Bank

£ Name of Bank, if any, & To be retained only if there is no Primary Land Mortgage Bank in the area.

£ ..... Bombay Provincial Co-operative Land Mortgage Bank at ₹.....

shall pay the said creditor(s) in cash the amount of debt as finally scaled down under section 53 or section 55(2), as the case may be, or if the creditor(s) so desires/desire, issue to him/them bonds issued by

* Name of place where Bank is situate

The Prabar Provincial Co-operative Land Mortgage Bank and guaranteed by the Provincial Government, in full satisfaction of all the debts due to him/them from the said debtor;

(b) the said debtor shall pay to the said Bank a sum of Rs. with interest at the rate -

notified by Government from time to time in that behalf, under sub-section (1) of section 55 of the said Act from the date on which the said Bank pays the creditor(s) the amount of debt due to him/them or the date on which the bond(s) is/are issued, as the case may be, till the amount of the debt is paid in full by [*] annual instalments of Rs. each, the first instalment being payable on

* Here mention number of annual instalments.

(c) Rs. shall be paid as Court fee by and Rs. shall be paid as costs by to , and

(d) all the immoveable property of the said debtor, described in colluma 4 of the Schedule hereto is hereby charged in favour of the said Bank until all the instalments mentioned in paragraph (b) are fully paid up.

Debt Adjustment Board,

Schedule.

(Here insert p. 7 supra.)

Office of the B.L.A.

Paragraph 4 of Revenue Department note at pages 44-45 ante.- A revised draft of Form 10, containing the conditions regarding (1) creditors' agreement to further scaling down of the debts and (2) payment of the amount of the debt by the debtor to the creditors direct, is sent herewith. It is not necessary to provide for the amount being recoverable as arrears of land revenue, because a specific provision has been made therefor in sub-section (3) of section 55 of the Bombay Agricultural Debtors Relief Act, 1939.

Paragraph 6 of B.D. note at pages 46-47 ante.- No action is necessary; please see clause 33(5) of L.A.Bill No. XIV of 1947.

Sd. D.V. Vaidyas
Remembrancer of Legal Affairs.

B.L. to B.D., No. 2609, dated the 19th March 1947.

MFP.